



November 2009

Net Neutrality Debate? Qu'est-ce Que C'est Que Ça?

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You remember the scene from old movies: throngs of ragged peasants storm the Bastille, they batter down the huge doors, they release all the political prisoners of the Old Regime, and a zealous young man waves the tri-colored flag from the battlements crying out “Liberté! Egalité! Unfettered and Non-discriminatory Internet Access!” Yes, one of the lasting legacies of the French Revolution was the famous “Declaration of the Rights of Man and Citizen” – surely one of the most stirring proclamations ever issued, and one whose Enlightenment principles were strongly informed by our own Declaration of Independence. Not to be outdone in issuing declarations, however, the European Union has now adopted a comprehensive framework for Internet regulation which declares that end users’ access to and use of Internet services applications is a fundamental right of man.

Wow. Now if you oppose Net Neutrality, you may as well be suggesting that we tear up the Constitution. Who knew that among the inalienable rights consumers were endowed with by their Creator were not only life, liberty, and the pursuit of happiness, but also the right to log onto the Internet with devices of their choice?

Give the Europeans some credit. They have been studying the issue of broadband Internet access for years while the FCC has been keeping its head buried deeply in the sand, desperately avoiding deciding how to regulate – or not regulate – the Internet, even as the Internet has continued to explode in growth and importance. Now that the Genachowski Commission has plunged into the Internet waters headfirst, maybe there is something to be learned from our brethren across the pond.

The European Parliament and its Council of Ministers reached an agreement this month which, when formally ratified by the Parliament and enacted into law by the member states, will establish a comprehensive framework for Internet regulation across the continent. The agreement was the product of years of discussion, with the last hold-up being the question of how to enforce copyright infringement against violators. In addition to entitlement to Internet access, here are some of the other highlights:

- f Net neutrality is assured by EU fiat. National telecom authorities will be authorized to set minimum quality levels for network transmission services so as to promote net neutrality and “net freedom”. As in the current proposal by the FCC, European consumers must be informed about the nature of the Internet service to which they are subscribing, including traffic management techniques and their impact on service quality, as well as any other limitations (such as bandwidth caps or available connection speed).
- f National authorities may require “functional separation” to ensure competition. This appears to be a throwback to our own Computer II regime under which the FCC required network service providers to be structurally separate from their own Internet service provider arms. The Europeans see this arrangement as encouraging both greater competition among ISPs and more investment in infrastructure by the network owners. In the U.K, structural separation is credited with increasing the number of unbundled internet access lines by about 550% over three years.
- f New governmental arrangements are established which permit greater independence of operation at the individual nation telecom level while assuring uniformity of principle and competitive approach across the whole Union.
- f The type of CPNI protections that we here have imposed on telecom carriers are now applied to ISPs, so that e-mail, bank account information, and other Internet transactions are strongly protected from disclosure.
- f Porting of phone numbers must be accomplished in one day. Mobile communications contracts may not bind consumers to more than one year.
- f Finally, the regulators voted down a proposal to allow copyright violators to be summarily banned from the Internet after three “strikes”. Instead, violators will have the right to a “prior, fair and impartial” hearing. Clearly, deprivation of Internet access is deemed cruel and unusual punishment. What is not clear is whether alleged copyright violators are entitled to appointed legal counsel, a jury trial, and Miranda warnings before their service is terminated.